

1972

How to Use, Abuse—And Fight Back with—Crime Statistics

Yale Kamisar

University of Michigan Law School, ykaminsar@umich.edu

Available at: <https://repository.law.umich.edu/articles/290>

Follow this and additional works at: <https://repository.law.umich.edu/articles>



Part of the [Criminal Law Commons](#), [Law and Politics Commons](#), and the [Public Law and Legal Theory Commons](#)

Recommended Citation

Kamisar, Yale. "How to Use, Abuse—And Fight Back with—Crime Statistics." *Okla. L. Rev.* 25 (1972): 239-58.

This Article is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

ENRICHMENT SERIES

HOW TO USE, ABUSE—AND FIGHT BACK WITH—CRIME STATISTICS*

YALE KAMISAR**

Statistics have an almost magical appeal in a "fact"-minded culture such as ours, among a people conditioned and accustomed to watch for—and attach great significance to—even the smallest fluctuations in say, the unemployment rate. Hence, as Darrell Huff graphically demonstrated in his famous little book, *How to Lie with Statistics* (1954), they can be—and have been—manipulated to terrorize or calm, inflate or depreciate, and above all, to sensationalize and over simplify.

As Harvard criminologist Lloyd Ohlin noted recently, statistics are especially potent when "they give a sense of solid reality (usually false) to something people vaguely apprehend and when they 'prove' or 'document' what people already 'feel' or want to believe." Small wonder, then, that "get-tough" politicians bent on "proving" by "facts," statistics and other "evidence" that crime is overwhelming our society and that "criminal-coddling" courts and "soft-on-crime" liberals are largely to blame, have found vast receptive audiences—especially among the frightened and angry "unyoung, unpoor and unblack."

Perhaps the most notable (but hardly original) examples of how politicians from each major party "selectively" utilize crime statistics occurred in May of 1968—when, for the first time since Gallup started polling, Americans ranked "crime" as "the most important domestic problem."

* This article is based on an address delivered January 19, 1971, at the University of Oklahoma College of Law in conjunction with the enrichment program, "Symposium '71: The American Constitution."

I have tried to adhere to the "groundrules" for publication of papers orally presented in the "Enrichment Series"—no significant revisions or embellishments of the paper as delivered, and no documentation—but have departed from the rules in several respects: I have supplemented the address at footnotes 6, 10, and 11, *infra*, by alluding to subsequent developments deemed especially relevant to the theme of the paper; moved a number of tangential or parenthetical remarks to textual footnotes; and, on the documentation front, weakened to the extent of attaching a "bibliographical note."

** Professor of Law, University of Michigan Law School. A.B., NYU, 1950; LL.B., Columbia University, 1954. Co-author: *Constitutional Law: Cases, Comments & Questions* 3d ed. 1970) (with W. Lockhart and J. Choper); *Modern Criminal Procedure: Cases, Comments & Questions* (3d ed. 1969) (with L. Hall, W. LaFave and J. Israel).

In preparing this paper I profited considerably from talks with my colleague, Richard Lempert, and from phone conversations with Professors Peter Lejins, Lloyd Ohlin, H. Richard Uviller, and Frank Zimring. I am also indebted to Warren G. Kohlman, Esq., a 1971 graduate of the Michigan Law School, for his helpful research assistance.

In the U.S. Senate debates on the Omnibus Crime Control and Safe Streets Act of 1968 (which, among other things, purports to "repeal" recent U.S. Supreme Court confession and line-up decisions), Senator John McClellan, under whose leadership Congress has passed much recent legislation "unleashing the police," made frequent use of—

two charts which have been placed here in the Chamber—one depicting "crime clocks," and the other one showing the relative rise of crime and population, percentage-wise, from 1944 through 1967.

These charts show that since the *Miranda* decision, crime has increased 137½ percent. Tell me it had no impact. Look at the *Mallory* case, look at the *Escobedo* case, look at the *Miranda* case. The graph is still turning in a spiral upward and upward. . . .

At another point in the Senate debate McClellan maintained: "[T]he tone is set at the top. The Supreme Court has set a low tone in law enforcement, and we are reaping the whirlwind today. Look at that chart. Look at it and weep for your country. Crime spiraling upward and upward and upward. . . ."¹

Senator Sam Ervin, too, made use of the charts, which, he observed, are "based upon facts gathered by the FBI since 1944." The charts, he stressed, show that serious crimes have increased 268 percent since the *Mallory* case (1957) and some 368 percent since 1944.

Senator Russell Long rounded out the increase in crime since 1944 to 400 percent and expressed amazement that many law school faculties and the Criminal Law Section of the American Bar Association were voicing opposition to the crime control legislation. "Why," he asked, "would any law school be in favor of a 400-percent increase in criminality?"

As for the opposition of the Criminal Law Section of the ABA, he suggested an answer, one supplied to him by a "courageous judge": "Who is the criminal law section of the American Bar Association? Those are lawyers who defend criminals.² Don't you realize that if crime has increased by 400 percent, their income has increased by 400 percent?"

Nor could Senator Long resist taking a second shot at the defense bar:

[A]s shown on the chart . . . the crime rate is going up at a 90° angle, and has almost reached the perpendicular which would show it going up about

¹ Apparently the charts were similar to the one the late William Parker kept on the wall of his office when he was Chief of the Los Angeles Police Department. Each crime peak was topped with the name of a Supreme Court decision favoring defendants' rights. In his new book, *The Self-Inflicted Wound*, Fred Graham, the *New York Times* Supreme Court correspondent, reveals that Chief Parker once told a federal official that "the police had seen, years before the Court issued its landmark rulings, that a crime boom was coming despite their best efforts—and that they had been lucky to have the Supreme Court to serve as a lightning rod for the criticism."

² I have been a member of the Criminal Law Section of the ABA for many years and it is plain to me that the prosecutors have always been well represented. Indeed, over the years a goodly number of prosecutors or former prosecutors have served as chairmen of the section.

the rate of 10,000 percent a year. That is about all there is left for it to do, to improve over the way it is moving. . . .

Just from looking at that chart, I would suppose that it must be one of the most profitable businesses in the world, or will soon be, to be a criminal lawyer . . . because at the rate that crime is increasing, with the Federal Government now moving in to pick up a large part of the check, one could become enormously wealthy just representing them on a volume basis.

Contributed Senator Ervin: "One would need only one client to have a great [criminal] law practice, just litigating the same case over and over again."

Manipulating crime statistics to suit the purpose at hand is, of course, a bipartisan activity. For example, at the very time the crime control legislation was being debated in the Congress (May of 1968), Republican Presidential Candidate Richard Nixon amply demonstrated that he yields to no Democrat in this art. He issued his long awaited and well-received position paper on crime, *Toward Freedom From Fear*, pinning the blame on the Democratic Administration (and the Warren Court) for letting crime get out of hand:

In the last seven years while the population of this country was rising some ten percent, crime in the United States rose a staggering 88 percent. . . .

The Administration in Washington seems to have neither an understanding of the crisis which confronts us nor a recognition of its severity. As a result, neither the leadership nor the necessary tools have been provided to date to enable society's peace forces to regain the upper hand over the criminal forces in this country. . . .

[A] contributing cause of this staggering increase is that street crime is a more lucrative and less risky occupation than it has ever been in the past. Only one of eight major crimes committed now results in arrest, prosecution, conviction, and punishment—and a twelve percent chance of punishment is not adequate to deter a man bent on a career in crime. Among the contributing factors to the small figure are the decisions of a majority of one of the United States Supreme Court.

The *Miranda* and *Escobedo* decisions of the high court have had the effect of seriously hamstringing the peace forces in our society and strengthening the criminal forces. . . .

The balance must be shifted back toward the peace forces in our society and a requisite step is to redress the imbalance created by these specific decisions. . . .

"The statistics and evidence," maintained Candidate Nixon, "are there for all to see." But not *all* of them were there.

For one thing, the American people might have found less plausible the charge that its "crime crisis" was in large measure the product of the "imbalance" wrought by the Warren Court (Mr. Nixon had put this "major deficiency" of

domestic "peace forces" even ahead of the number and quality of the police) and gained less solace from the Republican candidate's promise to "redress the imbalance" by federal legislation, constitutional amendments (if necessary), and appointments to the High Court of "men who are thoroughly experienced and versed in the criminal laws"³ if it had been given some inkling of the crime problems afflicting the English-speaking peoples on the other side of the Atlantic. From 1955-65 (the period subjected to the most intensive study by a thorough survey of crime in those countries published just about the same time as Nixon's paper on crime), the number of indictable offenses recorded by the police in England and Wales—which had experienced no "revolution in criminal procedure" comparable to America's—had increased 162 percent.

Indeed, according to police statistics, during this ten-year period the crimes fearful Americans feared the most had soared more sharply in England and Wales than indicated by even the formidable overall increase: robbery, up 354 percent; breaking and entering offenses, up 237 percent; crimes of violence against the person, up 225 percent—and up 587 percent from 1946!

For another thing, the 88 percent crime increase might have seemed a bit less staggering and the Democratic Administration's failure to keep crime in check somewhat less egregious if the President-to-be had bothered to add that in 1960—which marked the end of the eight-year Eisenhower-Nixon reign—the FBI Uniform Crime Reports had recorded 98 percent more crime than in 1950. Moreover, this 1950-60 statistic might have led some people to have second thoughts about the Warren Court's contribution to the sorry state of crime, for most commentators are of the view that the Warren Court's "revolution in criminal procedure"⁴ did not reach "revolutionary" proportions until the 1961 decision in *Mapp v. Ohio*, requiring state courts to exclude unconstitutionally seized evidence, and, of course, *Gideon* (1963), *Escobedo* (1964) and *Miranda* (1966), came still later.⁵

* * * *

To a great many members of the public (and not a few politicians) the

³ These men, presumably, are to be contrasted with the author of the *Miranda* opinion, Chief Justice Earl Warren, who, before becoming Governor of California had spent over 20 years in state law enforcement work [Deputy City Attorney (1 yr.), Deputy District Attorney (5), District Attorney (14) and Attorney General (4)]; and the author of the *Mapp* opinion, Justice Tom Clark, who had been U.S. Attorney General for four years immediately prior to ascending to the Supreme Court.

⁴ As I sought to demonstrate in my yet-to-be-published Gaspar Bacon Lecture at Boston University on March 15, 1971, "What Revolution in American Criminal Procedure?," it is my view that the so-called landmark confession, search and seizure, and lineup cases handed down by the Warren Court have been so effectively "neutralized" by resourceful and unsympathetic law enforcement officials and lower court judges (or, in some instances, so undercut by subsequent decisions of the U.S. Supreme Court itself) that the much ballyhooed revolution in American criminal procedure has had very limited practical impact.

⁵ Arguably, *Griffin v. Illinois* (1956) launched the "revolution," but the "equality principle" of *Griffin* and *Douglas v. California* (1963) caused relatively little furor until applied to the "police practice" phases of the criminal process in the late 1960's.

almost predictably frightening statistics published by the FBI⁶ seem to measure crime volume and trends in a detached, objective (some would say "scientific") way. But these cold, hard "facts" (e.g., an 88 percent increase in crime from 1960-67, a 148 percent rise from 1960-69) might appear a good deal less solid and less awesome if it were generally known that (a) during the period of spiraling reported crime there have been significant changes in police recording practices and police attitudes about recording crime, and (b) there is a "dark figure" of *unreported* crime *several times* larger than the amount showing up in the crime statistics, and that there are many ways this large pool can be, and probably has been, tapped to swell the volume of *reported* crime.

To turn to the most obvious factor first, changes in police reporting practices, a few illustrations should suffice:

In the early 1950's, during the first year of operation of a central reporting unit in New York City, *reported* burglaries skyrocketed 1300 percent and *reported* robberies some 400 percent. Further refinements in reporting methods caused New York to experience another "crime reporting wave" in 1966; robbery soared 164 percent in one year, burglary some 139 percent. According to Commissioner Howard Leary, however, the *actual* increase in crime was less than 10 percent of the *statistical* increase.

When, upon taking command of the Chicago Police Department in 1960, Orlando Wilson drastically revamped the department's method of reporting crime and maintaining records, he warned that the new system's more accurate reporting would create the impression of a "crime wave." A common practice of the pre-Wilson era, for example, was for a commander to ignore a lot of crime in order "to save work and make the district look better on paper." When, more than a full year after his new system of reporting went into effect, Chicago crime continued to rise, Wilson had a ready explanation: a massive publicity campaign to call the police at a new central number when crime occurred—and increased confidence in the police—had encouraged people to report crimes they would not have reported in the past.⁷

⁶ Fred Graham reports in *The Self-Inflicted Wound* that the FBI crime data—released to the public in the form of four quarterly reports and a fifth annual recapitulation—"became so galling to Attorney General Nicholas deB. Katzenbach that he is said to have seized a sheet of crime statistics one day, pounded his desk and growled: 'It's bad enough to lose the war on crime, but to lose it five times a year is too much!'"

Evidently Attorney General Mitchell has done more than merely growl about the FBI reports. On September 8, 1971, some nine months after this paper was delivered, the *New York Times* (per Fred Graham) revealed that for the past year Mr. Mitchell's "public relations staff" has been "rewriting" the FBI summaries and interpretations of the national crime statistics so as to give the impression that the crime rise has been tapering off—and the Justice Department programs succeeding. But the underlying figures, noted the *Times*, "show that reported crime is rising at about the same velocity as before."

Four days later, in an editorial on the "editing" of the FBI reports, the *Times* observed: "Other Government departments have tried this same technique on the rate of inflation and the rate of unemployment without much success, but Mr. Mitchell can conjure more successfully with the crime figures because of the enormous popular prestige of the FBI."

⁷ There is a cruel twist to Wilson's participation in the "numbers game." In 1963, the

More subtle than the changes wrought in methods of statistical compilation are the changes wrought in police attitudes about recording crime. A few years ago, Vincent Piersante, then Chief of Detectives of the Detroit Police Department, told me: "In the old days, when a suburbanite came to us with the story that he had been beaten or robbed in the 'central city' in the early hours of the morning, we'd often retort: 'What were you *doing there* that time of the morning? What's your wife going to think when she finds out? Do you *really* want to report this?'" (It turned out that he usually didn't.) "Now," added the Chief, "we're so crime-conscious, or so crime-statistics conscious, that every one of these robberies or assaults is dutifully recorded."

Public pressure on the police also leads them to "upgrade" offenses. When slum youths, strolling through a more prosperous neighborhood, force a youngster to surrender a bike—or even a few cents—this may no longer be called a misdemeanor but "robbery." Purse thefts which used to be considered misdemeanors are also more likely to be classified as robberies now. As Captain James Meehan, head of the New York Police Department's Crime Analysis Unit, noted several years ago: "We've now reached the point where if someone were to complain that a window had been broken it could be listed as attempted burglary, not malicious mischief."

The extent to which more streamlined and more complete record-keeping and changes in crime classification practices contribute to the headline-making ten or twenty-year "crime trends" is anybody's guess. But changes in the *public's* and the *victim's* attitude toward reporting crime may cut even more deeply into the "dark figure" of unreported crime.

Why has so much crime gone unreported? According to several studies, among the reasons are fear of reprisal, an unwillingness to take the time, lack of knowledge as to how to report, and—the reason most often given for all offenses—a feeling that the police "can't do anything about it anyway," i.e., can't recover the property or identify the offender. Thus, the greater the citizen's confidence in the possibility of effective police action (an attitude enhanced by intensive campaigns in New York, Chicago and other large cities to encourage people to report), the greater the tendency of the citizen to contribute to a "crime reporting wave." Or as Professor Norval Morris recently put it, "the better we do, the worse it will appear."

There are other factors at play. As a police department grows aware that it is generally regarded as understaffed, overworked and judicially "hamstrung," it becomes less inhibited about producing fuller and more accurate crime statistics. An undermanned force, which is "handcuffed" by the courts to boot, can hardly be held responsible for sharp increases in crime. As crime figures rise the public

tide of *reported* offenses did begin to turn in Chicago. Wilson, the police chief, was elated. But Wilson, the critic of the Supreme Court, was unperturbed. *Two short months* after taking credit for the dip in reported crime in his own city, Wilson addressed an American Bar Association meeting and, citing some *Uniform Crime Report* figures, solemnly declared: "In the name of protecting individual liberties, we are permitting so many technicalities to creep into our system of criminal justice that . . . crime is overwhelming our society."

grows more frightened and angry. An alarmed and indignant public is more determined to report crime. Crime statistics rise still higher—and inflame the public still more. In short, as Professor Ohlin has observed, “a cyclical pattern has been set in motion where the increasing public readiness to accept an accurate portrayal of the full dimensions of the crime problem meets an increased willingness to supply it.”

Moreover, the more affluent the victim the more he tends to respect and rely on the police, and the more he is likely to report the crime. The “greater movement” in metropolitan areas observed by police officials means that a higher percentage of the more affluent members of the community are being victimized by burglars and robbers. As muggers and other violent criminals spill into the “good” neighborhoods and as heroin addicts in need of the price of a “fix” become daring or desperate enough to burglarize in the better parts of town, the more affluent citizens are hit harder than ever before. This “invasion” intensifies the “feeling” that there is much more crime than ever before—as one unidentified police officer remarked in a 1968 *New York Times* survey, “there will always be more attention paid when the more affluent members of society are the victims”—and the higher incidence of crime reporting by these “better” people “proves” that there is indeed much more crime.

It is important to note that not only many criminologists but, according to the aforementioned *Times* survey, most high-ranking New York police officials as well, are convinced that by the late 1960's the public was reporting a *much higher percentage* of actual crime than ever before.

* * * *

Am I saying that there hasn't been *any real increase* in crime? No, even such notable hold-outs as Marvin Wolfgang of the University of Pennsylvania and Lloyd Ohlin now concede that there has been some rise in *actual* crime. Indeed, I share the view that advocates of a calm and rational approach to the crime problem disserve their cause by “explaining away” the *entire* statistical increase as a mere *paper* increase, thereby creating a “credibility gap” between themselves and the general public. What I am saying is that the *real* increase in crime has probably been much less dramatic than the bare statistics indicate and that what increase has actually occurred can much more plausibly be attributed to such factors as striking changes in the age distribution of the population and the massive migration of rural dwellers to urban areas than to changes in the rules of evidence.

Critics of the Supreme Court are often content to *assert* or *assume* that because increases in reported crime and declines in the “clearance rates” have accompanied or followed recent Supreme Court decisions dealing with confessions or searches and seizures these decisions have *caused* or been *principal factors in bringing about* these changes.

Thus, during the debates on the crime control bill Senator Ervin pointed to the crime charts and argued that they “show” that since *Mallory* and since

Escobedo and since *Miranda* crime has increased certain substantial percentages. And in the course of these same debates, Senator McClellan challenged his colleagues to "look at" the charts and "tell me that [*Miranda*] had no impact" on the crime rate.⁸

Whenever a public figure asserts that in the years since the ——— case was decided crime has increased *X* percent (or the clearance rate for certain crime(s) has dropped *Y* points) and that *therefore* the statistics show ("establish") ("prove") that Supreme Court decisions have "handcuffed the police" ("encouraged the criminal forces"), I have to respond: I follow everything you say—except the "therefore." As Mr. Huff, author of *How to Lie with Statistics*, has noted, that *A* "caused" *B* because *B* followed *A* is an ancient fallacy, but it "has a powerful tendency to crop up in statistical material, where it is disguised by a welter of impressive figures." Suppose statistics show that the maximum rates for both suicides and weddings occur in June. Therefore, *what?* Do suicides produce June brides—or do June weddings precipitate suicides of jilted suitors. Observes Huff:

In our time it is easy to show a positive correlation between any pair of things like these: number of students in college, number of inmates in mental institutions, consumption of cigarettes, incidence of heart disease, use of x-ray machines, production of false teeth, salaries of California teachers, profits of Nevada gambling halls. To call some one of these the cause of some other is manifestly silly. But it is done every day.

The real question is not *whether* there has been an actual increase in crime, but *why*. Here, as elsewhere, there is no shortage of theories. And here, as elsewhere, as the incisive philosopher and social commentator, Morris Cohen, once said, "the facts that we dislike we call theories; the theories that we cherish we call facts."

As criminologists never tire of pointing out (but politicians who measure crime rises against the *overall* increase in population consistently overlook), crime, especially the kinds the public fears most, is largely a function of youth and young adulthood. For as far back as crime statistics go, young persons in the 15-24 age category have been the most crime-prone group in the country. A glance at the latest *Uniform Crime Reports*, for example, discloses that in 1969, more than one-fifth of all those arrested for serious crimes were under the age of 15 and almost one-half were under 18. Over half of those arrested for robbery were under 21; fully a third were under 18. Almost three-fourths of those arrested for burglary were under 21; over a half were under 18; and slightly over one-fourth were under 15!

⁸ Apparently Senators Ervin and McClellan see no inconsistency in maintaining on the one hand that Supreme Court decisions requiring suspects to be advised of their rights have "handcuffed" the police and insisting on the other that such decisions were unnecessary because "practically everybody knows"—or, as they stated at another point, at least "virtually all those who commit serious crimes know"—that a person doesn't have to say anything to a policeman and that anything he does say may be used against him.

Because of the post-war baby boom, the size of the 15-24 high crime risk group has been increasing much more rapidly than other age groups and almost *four times* faster than the entire population. *Each year* since 1961, about a *million more* young people have reached this maximum crime risk age group than were there the previous year. According to Bureau of Census reports, whereas the 14-24 age group increased by only 2.3 million from 1930-60, it rose by 12 million (27 to 39 million) from 1960-69.

The President's Crime Commission concluded that, assuming no change in the rate of arrests during 1960-65, between 40 and 50 percent of the total arrests during that period "could have been expected as the result of increases in population and changes in the age composition of the population."

The "crime prone youth wave" has not struck evenly across the country. The major cities—especially the ghettos—have been hit disproportionately hard. And these are the areas where we have always had higher crime rates.

For example, Professor Norval Morris tells of how a "small census" of a depressing housing complex in a Chicago ghetto area revealed that of 28,000 people living there some 20,000 were under 21! "Think of the pattern of family life these figures describe," he notes, "think of the incidence of crime they will produce, simply in relation to age at risk."

Another significant social trend is the increasing urbanization of the population. Violent crime in the United States is primarily a phenomenon of large cities. As the National Commission on the Cause and Prevention of Violence put it, "in the context of major violent crimes, the popular phrase 'urban crisis' is pregnant with meaning."

As David Acheson pointed out some years ago, when he was U.S. Attorney for the District of Columbia, "crime, as well as other human behavior, is a function both of the number of persons involved and their proximity to each other." Moreover, even if one assumes that crime rates are unaffected by the steady migration to metropolitan areas, *fear of crime* increases. As Professor Morris has put it, "if you live your life in a room with 10 people with a given crime rate and then increase the number of people in that room to 20, it is obvious that the fear will increase as you move about the room in relation to crime without any change in the rate of crime."

From 1960 to 1969 the "metropolitan area" population increased 17 million (up to 130 million) and the population for the rest of the country only 4 million (up to 71 million). True, virtually, if not all, the population growth for metropolitan areas occurred within the "suburban rings." But suburbanites still work and play in the cities. And, increasingly, the city's criminals are working and playing in the suburbs.

Whether, if Messrs. Nixon, McClellan and other politicians had taken the trouble in 1968 to advance the reasons suggested above for the increases in *real* and *statistical* crime, very many Americans would have been impressed is problematical. There is much force in Richard Scammon and Ben Wattenberg's quip,

in their new book, *The Real Majority*, that citizens afraid of being mugged "weren't buying" explanations—"they were buying guns for protection."

* * * *

Indeed they were. As the National Commission on the Causes and Prevention of Violence reported last year, half of the nation's 60 million households now possess at least one gun. In the last decade some 30 million guns have been added to the civilian stockpile—three times as many as were added the previous 50 years. In the last five years annual rifle and shotgun sales have doubled—and annual handgun sales quadrupled!

Studies by the Violence Commission's Task Force on Firearms show that gun sales in a particular area tend to increase sharply during and after a period of civil disorder—with apparent calamitous results. After its 1967 riot, for example, Detroit issued four times as many handgun permits in 1968 as it did in 1965; between 1965 and 1968 homicides in Detroit committed with firearms soared 400 percent while those committed with other weapons increased a relatively low 30 percent; firearms robberies increased twice as fast as those committed without firearms. (These rates of increase were much higher than for the nation as a whole.)

What do the "national statistics" show? Guns play an increasingly deadly role in aggravated assault and robbery. Today about a fourth of all aggravated assaults are committed with guns, as opposed to only about an eighth some five years ago. One of every three robberies (two out of every three armed robberies) is committed with a gun, and the fatality rate for victims of firearms robberies is almost four times as great as for victims of other armed robberies. Since 1963 the number of homicides involving firearms has increased about 50 percent while the number committed with other weapons has risen only 10 percent.

"Studies show," reported the Commission, "that most persons who commit homicides . . . are persons likely to act on impulse in a moment of rage or passion. . . . There is no hard evidence to prove or disprove the thesis that lacking a gun, an enraged person will resort to a knife or other weapon. But there is evidence demonstrating that the fatality rate of firearms attacks is more than four times greater than the fatality rate of knife attacks (knives being the next most frequent and lethal weapon used in homicides). Thus, even if the number of violent attacks did not go down, the number of fatalities resulting from violent attacks would be substantially reduced if the attackers did not have guns."

The "law and order" crowd, it turns out, is not *always* impressed by statistics. Not a few politicians who readily saw—or simply assumed—a relationship between the "crime wave" and the work of the Warren Court, had great difficulty finding any connection between the huge and rapidly growing arsenal of weapons in private hands, the lack of an effective national firearms policy, and the apparent great increases in violent crimes committed with firearms.

Critics of our "criminal-coddling" courts are fond of comparing the incidence of violent crime in our land with the much lower rates in other nations—appar-

ently unaware that similar comparisons were made in the 1920's, *long before* the U.S. Supreme Court began to "apply" various procedural safeguards in the Federal Constitution to state systems of criminal justice⁹—but they seem much less interested in comparing (and exploring the consequences of) our country's gun control legislation with the much tighter restraints operating in other civilized nations. Yet it is not easy to see how a serious student of the "crime problem" can turn his back on such statistics. For example, as former Attorney General Ramsey Clark recently noted in *Crime in America*:

England and Wales had 27 murders committed with guns in 1966 among 54½ million people, while Houston, Texas, alone had 150 gun murders among its 1½ million citizens. That same year Sweden, with a suicide rate nearly twice ours, experienced 14 murders and 192 suicides by gunfire. Its murder rate by guns was one-seventh as high as ours; its suicide rate by gunfire was one-half as high.

In the 1968 debates on federal "gun control" laws, Senator Roman Hruska, a strong critic of the Supreme Court, maintained that proponents of gun control had the "burden of proving" that "the prohibition of mail order sales of firearms will have any appreciable or measureable impact on rates of crime" or "even on the number of instances of misuse of firearms" and concluded that they had not "sustained" that burden. When a proponent of more restrictive national gun controls cited the *Uniform Crime Reports* for 1967 for the proposition that the percent of murders by use of firearms in a relatively strict gun control state was only half that of a comparatively weak control state, Hruska, who has treated FBI statistics with more reverence on other occasions, retorted: "If we are going to get into the business of figures and statistics, let us go all the way. It seems that if one does enough hand-picking, balancing, and meandering through the tabular records of this kind of [uniform crime] report, he can prove almost anything he wants."

Senator Strom Thurmond philosophized:

[T]he gun is merely an instrument of crime; the real cause of crime is criminals, who today are operating in an atmosphere of permissiveness and arrogance. Supreme Court decisions have severely handicapped the police in the apprehension of criminals and diminished the power of the courts to see that the guilty are punished Our crime and gun problem would largely come under control if conviction rates were doubled and sentences were more severe.

Whether or not the domestic arms buildup is contributing significantly to the apparent large increases in violent crime and, if so, whether or not federal legis-

⁹ For example, in 1920, and again in 1922, in the course of scoring "the tender solicitude for the welfare of criminals," the first head of the newly established Chicago Crime Commission pointed out: "During 1919 there were more murders in Chicago (with a population of three million) than in the entire British Isles (with a population of 40 million)."

lation can be drafted which will substantially reduce the probability that potential criminals will acquire these weapons, would seem to be questions worth considering in a position paper on crime. Yet, although Mr. Nixon's "blueprint" for combatting crime considers at some length the Supreme Court's contribution to the problem, it contains *nary a word* about gun possession or gun control.

* * * *

Even if the courts aren't to blame for the crime rise, who else can be responsible for only one reported crime in eight resulting in a conviction?

"With 87 out of every 100 offenders in our country going free and escaping any punishment," wailed Senator Ernest Hollings during the congressional debates on the Crime Control Act of 1968, "the criminal knows there is very little bite to the law today. No longer can it be said that crime does not pay when there is now only a 13 percent chance that an offender will be caught and punished and the criminal knows this. There is no questioning the fact that the recent decisions of the Supreme Court have contributed greatly to this problem." Senator John McClellan similarly lamented the low "conviction rate." After describing "the kind of men the courts are turning loose," he protested: "No wonder the criminal feels he can go out and violate the law, because he knows that he can get away with it." And in his position paper on crime (using figures which varied from Senator Hollings' by one percentage point), Presidential Candidate Nixon warned: "Only one of eight major crimes committed now results in arrest, prosecution, conviction, and punishment—and a twelve percent chance of punishment is not adequate to deter a man bent on a career in crime. Among the contributing factors to the small figure are the decisions of a majority of one of the United States Supreme Court."

Such talk, no doubt, manifests the speaker's determination not to "pussy-foot" about the crime issue, but is it "straight talk?"

Suppose you were trying to express in numbers the probability that a baseball player who took the field regularly would strike out *sometime* during the season. To say that he had only a twelve percent chance of striking out *any one time* he went to the plate would be a rather awkward and obscure way of saying that in the course of the season he would strike out *thirty or forty* times, would it not? Fortunately few burglars or robbers get as many "turns at bat" as baseball players, but (unless they're caught the first time) they do commit many more than *one* burglary or robbery a "season," let alone a career.

If apprehension and conviction were purely a random occurrence (as opposed, in fact, to a product of such non-random factors as the status of the particular victim, the skills of the particular criminal, and the efficiency of the particular police department), and *if* the odds of a crime resulting in conviction were one in eight (as I indicate below, they are probably a good deal lower), then anyone who committed five burglaries or more would stand a better than 50 percent chance of being punished. Even if the chance of being caught and punished for any one crime were much lower, the run-of-the-mill burglar and robber, because he spends so much time plying his trade, would be bucking very

stiff odds over any substantial stretch of time. To say that 87 or 88 reported offenses out of 100 do not result in conviction is *not to say*, as Senator Hollings did, that 87 or 88 offenders out of 100 "escape any punishment."

A *thinking* would-be-criminal—especially one who is supposed to be shrewd enough to study and to take into account the latest Supreme Court decisions—must consider the *cumulative* statistical chance of escaping unscathed when he engages in 20 or 50 or 100 crimes, and as the University of Chicago Law School's Frank Zimring recently put it when I broached the subject, "anybody who figures that at today's odds he can afford to pursue a criminal *career* is poorer at arithmetic than the fellow who calculates that he can safely go over Niagara Falls in a barrel."

The "only one-in-eight crimes results in conviction" and "twelve percent chance of punishment" figures are misleading in another sense, and in a *different* direction. Presumably these figures are based on crimes *reported* to the police, but, as already indicated, most crimes go unreported. Thus Messrs. Nixon, McClellan, Hollings, and other politicians could have chosen say, a spectacular "only one burglary in 24 [or 32] results in conviction" statistics rather than the less sensational (but still frightening) "one *reported* burglary in eight results in conviction" figure. Why didn't they?

Perhaps because the more spectacular statistics might have necessitated some discussion of the vast reservoir of unreported crime and this in turn might have raised some doubts about the solidity and sanctity of crime statistics. Perhaps because a primary thrust of much "law and order" rhetoric is to place a larger part of the blame for the sorry state of crime on the courts and although computations based on reported crime *understate the crime problem*, they greatly exaggerate the extent to which *the courts* may be contributing to the problem. After all, how much blame can be heaped on the courts for the increase in burglaries and for the "fact" that only one in 24 or 32 burglaries result in conviction if 16 of every 24 burglaries—or perhaps as many as 24 of every 32—aren't even reported to the police?

For political purposes the "only one-in-eight crimes results in conviction" statistic has more than adequate gee-whiz! appeal—so long as its arrest, prosecution, and conviction components are not singled out. The lump figure may be misunderstood as meaning that only one out of every eight who are *caught and prosecuted* is convicted—when the primary reason for the "one-in-eight" figure is that most reported offenses *never result in an arrest or prosecution*. This is precisely the error Senator Russell Long made in the course of the recent crime control debates when he claimed that "seven out of the eight criminals *we catch* are turned loose anyway." (Emphasis added).

Once that "one-in-eight" lump figure is *broken down*, however, the limited extent to which the judiciary generally, as contrasted with other agencies and multiple socio-economic factors, can possibly be contributing the the low "conviction rate" is quickly grasped. For example, the *Uniform Crime Reports* for 1967 (the basis for the Nixon-McClellan-Long crime statistics) reveal that, for

reasons I shall touch upon below, *less than one reported crime out of four* was "cleared by arrest." That is to say, only about 22 percent of the time were the police able to say that their investigation established the identity of the offender and that the crime reported was "cleared" or "solved" by his arrest.

A crime is "cleared," it should be pointed out, *whether or not* the arrestee is later convicted—or even indicted. Indeed, as noted in the *Uniform Crime Reports* (for such reasons as failure of the victim to cooperate or appear for the prosecution, referral of the arrestee to juvenile authorities, and insufficient evidence to support a formal charge), only 75 percent of those arrested for crime index offenses were turned over to the courts for prosecution.

In short, even if the conviction rate—as the term is used by the *Uniform Crime Reports* and as it is normally understood—the percentage of those held for prosecution who are found guilty—even if the conviction rate were 100 percent, only one reported crime in six would result in a conviction, because only one reported crime in six *leads to a criminal prosecution*. (The "conviction rate," once the cases get to the courts, is in the 80-90 percent range.)

* * * *

Although the over-all clearance rate has always been low, and sinking lower (from 26.1 percent in 1960 to 23 in 1966 to 20.6 in 1969), the rates vary considerably depending upon the crime involved. They have always been highest for murder, where maximum detective-power is allocated, typically the circle of suspects is small, and the offender (as the police well know) often turns out to be the victim's spouse, parent, lover or close friend. They are fairly high for forcible rape and aggravated assault, where more often than not the offender is at least casually acquainted with the victim and leads are provided by personal contact between victim and criminal. They have always been low, and dropping lower, for burglarly (from 29.5 percent in 1960 to 22 in 1966 to 18.9 in 1969) and for crimes against property generally—where the lack of witnesses and the tremendous volume of these offenses work in the criminal's favor.

Although the percentages are slipping, the *number* of crimes being cleared is increasing substantially. The trouble is that the number of reported offenses is rising even faster. Why the low, and dropping, clearance rates?

It is important to keep in mind that a single arrest may lead to the "clearance" (on paper, at least) of many crimes. Even when he cannot be connected to other "unsolved" or "uncleared" crimes by solid evidence, a suspect may be willing to confess to these other offenses if he believes he will receive more lenient treatment for his "cooperation" in the "clearing cases." Detectives are rarely displeased at "writing off old cases" and looking better on the FBI books.

A dramatic illustration is furnished by sociologists Jerome Skolnick, in his thoughtful book, *Justice Without Trial*. Skolnick witnessed the incident in the course of his study of a California police department. A burglar who "confessed" to—and enabled the police to "clear"—some 400 burglaries was *prosecuted for only one*, and given a mere 30 day sentence at that. On another such occasion a

district attorney insisted upon a heavy sentence, despite the fact that a promise of lenience had already been made in return for the defendant's "clearance" of other burglaries than the one for which he had been arrested and prosecuted. However, reports Professor Skolnick, eventually the police view prevailed, on the grounds that unless the police were "backed up" future burglary investigations would be "seriously impaired."

Although *Escobedo* and *Miranda* have not had the impact their supporters had hoped (and their critics had feared), apparently these cases have had the salutary effect of instilling (or heightening) an awareness among police interrogators that the courts will be "looking over their shoulder." This *sense of review* has led to a significant curtailment of the time the suspect used to be held before being taken before a judicial officer—and thus worked a substantial diminution of the "opportunity" the police once enjoyed to get the suspect to "confess to," and to "clear," *crimes other than* the one for which he had been arrested and was to be prosecuted. (This change probably began some years before *Escobedo* and *Miranda*, because the last stages of the old "totality of the circumstances" "voluntariness" test for admitting confessions saw the Supreme Court assigning increasing importance to lengthy police detention as a factor operating against "voluntariness.")

The reliability of clearance rate statistics is further shaken by the New York City Rand Institute's recent study of the New York City police, disclosing a *twenty-fold* variance in the number of crimes "cleared" per arrest. The most likely explanation is that different commanders *define* clearances differently. The number of cases "cleared" by an arrest in any unit, points out the study, "is probably influenced by how important the unit commander feels his clearance rate is."

This is not to deny that there has been a *real* drop in the clearance rates. H. Richard Uviller, for many years an outstanding assistant district attorney until he recently joined the Columbia Law Faculty, suggests some reasons: "What police manpower we do have is being spread thinner and thinner; much is now allocated to street demonstrations, for example; more is being extended to prevention and patrol and less to actually *solving* crimes. Thus, the police are forced to limit their investigative efforts to very serious crimes and, too often, can do little more than simply *record* reported burglaries and other crimes against property." (At this point one begins to wonder why the clearance rate for burglary is so *high*.) Moreover, notes criminologist Ohlin, the number of reported burglaries is rising especially fast in the suburbs—"where police forces are even thinner than their urban counterparts and homeowners, less accustomed than are their city cousins to using locks and taking other security measures, are relatively easy, wide-open targets."

If anything, Professors Ohlin and Uviller may have significantly understated the intractability of the problems posed by crimes against property. The aforementioned Rand Study reveals that *most* of the arrests for crimes against property are made *at the scene of the crime*; "the probability that any particular

case of robbery, burglary, or grand larceny will result in an arrest through a detective investigation is extremely small—six percent for robbery and about two percent for burglary and grand larceny”; “detectives are no more successful in solving cases to which they assign high priority than they are for cases of less significance”; and that “the solution of any particular property crime is a chance event, insensitive to the amount of investigation conducted.”

The sad, stubborn finding of the Rand Study, as well as earlier studies made for the National Crime Commission, is that absent personal observations of the offense by a police officer or personal identification by a victim or witness, *the great bulk of crimes are not, never have been, and (at least for the foreseeable future) are not going to be solved*—in most of these cases no arrests are ever made.

* * * * *

The double impact of (1) the low percentage of crimes reported and (2) the low arrest-clearance rates for those offenses which are reported, goes a long way toward laying bare the extent to which those politicians who concentrate their fire on the courts for the current “breakdown” in law and order are, in effect, perpetrating a cruel hoax on the public. This point was dramatically made in recent testimony by the former Executive Director of the President’s Commission on Law Enforcement and the Administration of Criminal Justice (Crime Commission), Professor James Vorenberg of the Harvard Law School. A few years ago, it should be pointed out, Professor Vorenberg incurred the wrath of a number of self-styled liberal law professors (including this writer) for his criticism of the *Escobedo* and *Miranda* decisions and their potential for expansion. But in recent testimony, he took members of a congressional crime committee through the following “arithmetical calculation based on the statistics from the Crime Commission Report”:

About three-fourths of the crime committed in this country is not reported to the police and only one-fourth or one-fifth of the crime that is reported leads to an arrest: “Changing the *Miranda* rule is not going to do any good for the other three-fourths [or four-fifths] because we cannot make the arrest anyhow.” Then, in more than two-thirds of the arrests that are made, “the police have other information. They do not need a confession. There is a witness. Or the police themselves have seen the offense occur. So now you are down to [$\frac{1}{2}$ of $\frac{1}{4}$ (or $\frac{1}{5}$) of $\frac{1}{4}$]. Then we know from studies that have been done by the *Yale Law Journal* and other sources that even before *Miranda* many people were *not* confessing, and in many cases since *Miranda* people still are confessing. So when you get all through, what you have is maybe a fraction of one percent of all crime that might be affected by a change in the *Miranda* rule. [Compare that figure] with the kinds of increases of crime that are being reported. . . .”

* * * *

The aforementioned *Yale Law Journal* study of New Haven police operations

revealed that interrogation was "important" in only twelve of the 90 cases observed and for which sufficient information was available to make judgments; that not even the detectives interviewed considered more than a small fraction of interrogations "important," however they defined that term; that in only three cases out of 90 was there sufficient evidence to arrest, but not enough to convict without interrogation; that "most suspects seemed to feel compelled by the circumstances to say something, and the police were usually successful in getting them to talk until they contradicted themselves"—at which point they could "almost always induce the suspect to make some kind of incriminating statement"; and that "entirely apart from the ineffectiveness of warnings when given, detectives cannot be trusted to give warnings consistently and conscientiously."

The New Haven (Yale) study is only one of several careful studies which reveal that the gnashing of teeth and tearing of hair which greeted *Miranda*—and which characterized the congressional debates on the Crime Control Act of 1968 and other crime legislation—were grossly exaggerated. "Middle Americans," however, are not likely to put much stock in what law students or law professors—as opposed to *lawmen*—report. Thus, the study most calculated to shake them—if they ever heard about it—was one conducted by the Los Angeles District Attorney's office. In the fall of 1966, (after his office had surveyed more than 1,000 post-*Miranda* cases, in fully half of which the defendant had made an incriminating statement), Evelle Younger, one of the nation's most respected prosecutors, reported that *Miranda* seemed to have had no appreciable effect on law enforcement in his jurisdiction—indeed that the conviction rate had increased. "Large or small," concluded Younger, "conscience usually, or at least often, drives a guilty person to confess. If an individual wants to confess, a warning from a police officer, acting as required by recent decisions, is not likely to discourage him."

It is interesting to note that, according to a news story covering the 1967 Annual Convention of the National District Attorneys Association (presumably accurate because reprinted in the association's official journal), "many" of Younger's colleagues showed "resentment" toward him "for having broken ranks with them on *Miranda*":

Civil libertarians, defending the Supreme Court in the face of the huge crime increases, have clung to Mr. Younger's assertions and statistics, holding them as positive proof that the crime problem exists independent of court decisions, and is fostered by social conditions.

A number of his colleagues buttonholed Mr. Younger here, pleading with him to review his statistics and reverse his position. But he only shrugged, said he was sorry, and stated that his most current figures reinforced his beliefs.

In his "blueprint" for dealing with crime Nixon charged that *Escobedo* and *Miranda* had "seriously hamstrung" society's "peace forces" and "very nearly rule[d] out the 'confession' as an effective and major tool in prosecution and law enforcement." It is hard to believe that Mr. Nixon and all the men who contributed

to his position paper on crime were unaware of the Yale and other law school studies. It is even more difficult to believe that Mr. Nixon and all the men who had a hand in the drafting of his position paper were unfamiliar with the findings and conclusions of the survey conducted by the Los Angeles District Attorney's Office. For one of Mr. Nixon's principal advisors on the crime issue—a man who two months later was to be appointed head of his 20-man Advisory Council on Crime and Law Enforcement—was Los Angeles District Attorney Evelle Younger.

* * * *

If Mr. Nixon had moved nimbly through and around the crime statistics to sensationalize the "crisis" proportions of the crime problem in the 1968 campaign, two years later Republican spokesmen—bent on demonstrating that the new administration was *doing something about* crime—staged a daring reverse-field run, leaving many statistics in the lurch.

According to FBI statistics for 1969, the "crime rate" (crime per 100,000 inhabitants) had increased more than 10 percent over 1968 and some 120 percent over 1960. The rate of "violent crime" (murder, forcible rape, robbery and aggravated assault) had risen 11 percent over 1968 and 104 percent over 1960. The clearance rate had slipped to one out of five reported offenses. Although the number of police officers slain by criminals had dropped 16 percent in 1968, the first year of the Nixon Administration saw a 34 percent jump in this category. (To date, no Democrat has asserted that "statistics show" that the Nixon-Mitchell crime program is producing a wave of "cop-killings").

Undaunted, Attorney General Mitchell announced in the spring of 1970 that "the tide is beginning to turn" against crime. Crime was still increasing substantially, but the *rate of increase*, he stressed, was *slowing down*. Whereas violent crime had risen 16 percent in 1967 and another 19 percent in 1968, in the first year of Nixon's term in office—thanks to "strong executive action in the Justice Department under John Mitchell" according to Vice President Agnew—violent crime had "only" increased 13 percent.¹⁰

The *rate of increase* in crime is a tricky concept because as the base grows (between 1960 and 1968 the number of reported crimes had more than doubled) the *same increase in volume* constitutes a smaller and smaller percentage increase. For example, what the American public wasn't told but might be interested in knowing is that the increase in the *volume* of violent crime during Nixon's first year in office was the third highest in the last ten years.

Moreover, a "slowing down" of the *rate of increase* seems to be an odd way

¹⁰ At the time I delivered this address, I was referring only to such direct pronouncements by Mr. Mitchell as the article which appeared in the June, 1970 issue of *Nation's Business*, entitled: "Attorney General Mitchell: The Tide is Turning Against Crime." I was then unaware that, as subsequently disclosed by Fred Graham of the *Times* (see note 6, *supra*), Mitchell's office had been rewriting FBI releases (beginning, it turns out, the very month the abovementioned article appeared). According to Graham, the releases prepared in the FBI office proclaimed, predictably, that "crime was continuing its upward trend," recording a rise of *X* percent, but as actually issued—still under J. Edgar Hoover's letterhead—the releases underscored that the "rate of increase" in crime had been "slowed" by *Y* percent.

of expressing annual trends. Suppose, for example, that at the beginning of this academic year, a new college president announced his determination to "do something" about campus disruptions. Suppose, further, that whereas six disruptions had occurred two years ago, and twelve last year, "only" fifteen took place the first year of the new president's term of office. This constitutes a sharp drop in the *rate of increase* in disruptions—but would the alumni be very impressed?

And if the performance during President Nixon's first year in office is something to brag about, what about President Kennedy's first year? Whereas crime had increased 14 percent during Eisenhower's last year in office it rose but 3 percent during Kennedy's first year. Whereas robbery and burglary each increased some 18 percent the year before the Democrats assumed national office, in 1961 burglary rose but 4 percent and robbery actually dropped 1 percent. Indeed, the *rate of violent crime per unit of population actually fell* 3 points during the first year of Kennedy's term. (It rose 30 points during Nixon's first year.)

The Republican Party's use of crime data in 1968, when it was on the attack, and the party's different crime "statisation" in 1970 and 1971, now that it is on the defensive,¹¹ is a good (or is it bad?) two-part illustration of a point the author of *How to Lie With Statistics* made years ago:

There are often many ways of expressing any figure. You can, for instance, express exactly the same fact by calling it a one percent return on sales, a fifteen percent return on investment, a ten-million dollar profit, an increase in profits of forty percent (compared with 1935-39 average), or a decrease of sixty percent from last year. *The method is to choose the one that sounds best for the purpose at hand and trust that few who read it will recognize how imperfectly it reflects the situation.* (Emphasis added.)

¹¹ As luck would have it, on January 19, 1971, the very day I delivered this address, but several hours too late for me to include it in the oral presentation, Attorney General Mitchell furnished another example of how to "play defense" against crime statistics. He called a press conference to review the accomplishment of his department at the end of his first two years in office, in the course of which he showed considerably less reverence for FBI statistics than he had in the past. In an effort to explain away the continuing increase in reported crime, he suggested that improved crime reporting procedures had created a "paper crime wave" that only made it *appear* that crime is still on the rise. (Not a few might retort that Nixon and Mitchell rode into office on just such a "paper crime wave.")

At this press conference, moreover, the Attorney General preferred to talk about the drop in the crime rates in *selected* cities over 100,000, rather than the continuing *nation-wide* increase. Thus, he gained considerable mileage out of reports that crime had decreased in 23 cities in the nation with a population over 100,000.

Apparently neither those in the mass media who dutifully disseminated this information nor their readers and viewers were aware that there are some 130 cities in America with a population over 100,000. If crime went down in 23 of these cities, what about the other 107? So far as I know, nobody asked this question. Newspaper headlines simply proclaimed: "U.S. Winning War Against Crime."

BIBLIOGRAPHICAL NOTE

The quotations from the "law and order" politicians which appear in the first part of this paper and other remarks in the same vein may be found at 114 CONG. REC. 8584, 8589,

11201, 11206, 11229, 13310, 13834-35, 13839, 14006, 14019-20, 14028, 14030, 14032, 14146, 27413 and 27415 (1968). The text of presidential candidate Nixon's position paper on crime is set forth at 114 CONG. REC. 12936-39 (1968).

The study of crime in England and Wales, referred to at p. 242 of this paper, is McCLEINTOCK & AVISON, *CRIME IN ENGLAND AND WALES* (1968). See especially Table 2.7 at p. 37. The news story covering the 1967 District Attorney convention, referred to at p. 255 *supra*, may be found in the July-August, 1967 issue of *The Prosecutor* (vol. 3, no. 4) at pp. 288-89. The findings of the *New York Times Survey* (which included interviews with nearly all of New York City's high-ranking police officials, as well as with a goodly number of sociologists and criminologists), discussed at pp. 244, 245 *supra*, is the subject of a long, discerning article by Murray Schumach in the February 4, 1968 issue of the *New York Times*.

The New York City Rand Institute Study, discussed at pp. 253, 254 *supra*, is Greenwood, *An Analysis of the Apprehension Activities of the New York City Police Department* (1970). The studies by the *Yale Law Journal* (of New Haven) and Evelle Younger's office (of Los Angeles), as well as a number of other studies of the impact of *Miranda* in practice, are summarized and evaluated in A.L.I., *Model Code of Pre-Arrest Procedure* 101-49 (Study Draft No. 1, 1968). The transcript of Attorney General Mitchell's January 19, 1971 press conference, referred to in note 11, *supra*, is on file in the University of Michigan Law Library.

In preparing this paper I found (trying to put aside the fact that I am so much in agreement with the authors) the most readable and, page for page, the richest and most incisive writings on the subject to be Norval Morris' *Politics and Pragmatism in Crime Control*, 45 F.R.D. 183 (1968), also appearing in 32 Fed. Prob. 9 (1968), and his, *Are Courts too Soft on Criminals?* 53 *Judicature* 231 (1970); and Lloyd Ohlin's, *The Effect of Social Change on Crime and Law Enforcement*, 43 *NOTRE DAME LAW.* 834 (1968). I found the most useful single volume on the general subject to be the National Crime Commission's task force report, *Crime and Its Impact—An Assessment* (1967). The "mathematics" and "politics" of crime are extensively and perceptively treated in GRAHAM, *THE SELF-INFLICTED WOUND* (1970), but since the book was not published until after the basic draft for this paper was written I was only able to make limited use of it.

I have also been "educated" or stimulated by the following: Bell, *What Crime Wave?*, *Fortune*, Jan. 1955, p. 96; Biderman, *Social Indicators and Goals*, in *SOCIAL INDICATORS* 68 (Bauer ed. 1966); Blumberg & Niederhoffer, *The Police in Social and Historical Perspective*, in *THE AMBIVALENT FORCE: PERSPECTIVES ON THE POLICE* (Niederhoffer & Blumberg eds. 1970); CIPES, *THE CRIME WAR* (1968); R. CLARK, *CRIME IN AMERICA* (1968); Cook, *There's Always a Crime Wave*, *N.Y. Times* (Mag.), Oct. 6, 1968, in *CRIME AND CRIMINAL JUSTICE* 23 (Cressey ed. 1971); CRAY, *THE BIG BLUE LINE* (1967); EDELMAN, *THE SYMBOLIC USE OF POLITICS* (1964); R. HARRIS, *THE FEAR OF CRIME* (1969); R. HARRIS, *JUSTICE* (1970); Josephson, Book Review (of Cipes, *supra*), 67 *MICH. L. REV.* 1448 (1969); Lejins, *Uniform Crime Reports*, 64 *MICH. L. REV.* 1011 (1966); N. MORRIS & G. HAWKINS, *THE HONEST POLITICIAN'S GUIDE TO CRIME CONTROL* (1970); Robison, *A Critical Review of the Uniform Crime Reports*, 64 *MICH. L. REV.* 1031 (1966); Traynor, *Lawbreakers, Courts and Law-Abiders*, 31 *MO. L. REV.* 181 (1966); Vorenberg, *Is the Court Handcuffing the Cops?*, *N.Y. Times* (Mag.), May 1, 1969, in *CRIME AND CRIMINAL JUSTICE* 82 (Cressey ed. 1971); J. Q. Wilson, *A Reader's Guide to the Crime Commission Reports*, *The Public Interest*, Fall, 1967, p. 64; J. Q. Wilson, *Crime and Law Enforcement*, in *AGENDA FOR THE NATION* 179 (Gordon ed. 1968); Wolfgang, *Uniform Crime Reports: A Critical Appraisal*, 111 *U. PA. L. REV.* 708 (1963); and J. S. Wright, *Crime in the Streets and the New McCarthyism*, *The New Republic*, Oct. 9, 1965, p. 10.

Finally, at several places I have relied on my earlier articles on the general subject, *On the Tactics of Police-Prosecution Oriented Critics of the Courts*, 49 *CORNELL L. Q.* 436 (1964); and *When the Cops Were Not "Handcuffed,"* *N.Y. Times* (Mag.), Nov. 7, 1965, reprinted in *THE AMBIVALENT FORCE: PERSPECTIVES ON THE POLICE* 312 (Niederhoffer & Blumberg eds. 1970) and in *CRIME & CRIMINAL JUSTICE* 46 (Cressey ed. 1971).